

House File 2450 - Introduced

HOUSE FILE 2450
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 581)

A BILL FOR

1 An Act relating to DNA profiling of certain criminal offenders.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 81.1, Code 2018, is amended to read as
2 follows:

3 **81.1 Definitions.**

4 As used in [this chapter](#), unless the context otherwise
5 requires:

6 1. "*Aggravated misdemeanor*" means an offense classified as
7 an aggravated misdemeanor committed by a person eighteen years
8 of age or older on or after July 1, 2014, other than any of the
9 following offenses:

10 a. A violation of [chapter 321](#).

11 b. A second offense violation of [section 321J.2](#), unless
12 the person has more than one previous revocation as determined
13 pursuant to [section 321J.2](#), subsection 8, within the
14 twelve-year period immediately preceding the commission of the
15 offense in question.

16 c. A violation of [chapter 716B](#).

17 d. A violation of [chapter 717A](#).

18 e. A violation of [section 725.7](#).

19 2. "*Combined DNA index system*" means a national, searchable
20 DNA database created and maintained by the federal bureau of
21 investigation where DNA profiles are stored and searched at a
22 local, state, or national level.

23 ~~2.~~ 3. "*DNA*" means deoxyribonucleic acid.

24 ~~3.~~ 4. "*DNA data bank*" means the repository for DNA samples
25 obtained pursuant to [section 81.4](#).

26 ~~4.~~ 5. "*DNA database*" means the collection of DNA profiles
27 and DNA records.

28 ~~5.~~ 6. "*DNA profile*" means the objective form of the results
29 of DNA analysis performed on a DNA sample. The results of
30 all DNA identification analysis on an individual's DNA sample
31 are also collectively referred to as the DNA profile of an
32 individual. "*DNA profile*" also means the objective form of
33 the results of DNA analysis performed on a forensic sample, to
34 the extent that sufficient biological material is present to
35 develop a valid DNA profile.

1 ~~6.~~ 7. *"DNA profiling"* means the procedure established by
2 the division of criminal investigation, department of public
3 safety, for determining a person's genetic identity.

4 ~~7.~~ 8. *"DNA record"* means the DNA sample and DNA profile,
5 and other records in the DNA database and DNA data bank used to
6 identify a person.

7 ~~8.~~ 9. *"DNA sample"* means a biological sample provided by
8 any person required to submit a DNA sample or a DNA sample
9 submitted for any other purpose under [section 81.4](#).

10 10. *"DNA testing"* means a test to analyze physical and
11 biological evidence from a DNA sample including analysis
12 that might not result in the establishment of a complete DNA
13 profile.

14 11. *"Forensic sample"* means an evidentiary item that may
15 contain DNA relevant to a crime.

16 12. *"Keyboard search"* means a manual keyboard search
17 conducted in accordance with the current version of the
18 national DNA index system operational procedures manual.

19 ~~9.~~ 13. *"Person required to submit a DNA sample"* means a
20 person convicted, adjudicated delinquent, receiving a deferred
21 judgment, or found not guilty by reason of insanity of an
22 offense requiring DNA profiling pursuant to [section 81.2](#).
23 *"Person required to submit a DNA sample"* also means a person
24 determined to be a sexually violent predator pursuant to
25 section 229A.7.

26 Sec. 2. Section 81.10, Code 2018, is amended to read as
27 follows:

28 **81.10 DNA profiling after conviction.**

29 1. A defendant who has been convicted of a felony or
30 aggravated misdemeanor ~~and who has not been required to~~
31 ~~submit a DNA sample for DNA profiling~~ may make a motion to the
32 court for an order to require that DNA ~~analysis~~ profiling be
33 performed on ~~evidence~~ a forensic sample collected in the case
34 for which the person stands convicted.

35 2. The motion shall state the following:

1 *a.* The specific crimes for which the defendant stands
2 convicted in this case.

3 *b.* The facts of the underlying case, as proven at trial or
4 admitted to during a guilty plea proceeding.

5 *c.* Whether any of the charges include sexual abuse or
6 involve sexual assault, and if so, whether a sexual assault
7 examination was conducted and evidence forensic samples were
8 preserved, if known.

9 *d.* Whether identity was at issue or contested by the
10 defendant.

11 *e.* Whether the defendant offered an alibi, and if so,
12 testimony corroborating the alibi and, from whom.

13 *f.* Whether eyewitness testimony was offered, and if so from
14 whom.

15 *g.* Whether any issues of police or prosecutor misconduct
16 have been raised in the past or are being raised by the motion.

17 *h.* The type of inculpatory evidence admitted into evidence
18 at trial or admitted to during a guilty plea proceeding.

19 *i.* Whether blood testing or other biological evidence
20 testing was conducted previously in connection with the case
21 and, if so, by whom and the result, if known.

22 *j.* What biological evidence exists and, if known, the agency
23 or laboratory storing the evidence forensic sample that the
24 defendant seeks to have tested.

25 *k.* Why the requested analysis of ~~DNA evidence~~ a forensic
26 sample is material to the issue in the case and not merely
27 cumulative or impeaching.

28 *l.* Why the DNA ~~evidence~~ results would have changed the
29 outcome of the trial or invalidated a guilty plea if the
30 requested DNA profiling had been conducted prior to the
31 conviction.

32 3. A motion filed under this section shall be filed in
33 the county where the defendant was convicted, and notice
34 of the motion shall be served by certified mail upon the
35 county attorney and, if known, upon the state, local agency,

1 or laboratory holding evidence described in subsection 2,
2 paragraph ~~"k"~~ "j". The county attorney shall have sixty days to
3 file an answer to the motion.

4 4. ~~Any~~ Subject to section 81.8, any DNA profiling of the
5 defendant, an unknown person, or other biological evidence
6 testing conducted by the state or by the defendant shall be
7 disclosed and the results of such DNA profiling or other
8 testing described in the motion or answer.

9 5. If the evidence forensic sample requested to be tested
10 was previously subjected to DNA or other biological analysis
11 by either party, the court may order the disclosure of the
12 results of such testing, including laboratory reports, notes,
13 and underlying data, to the court and the parties.

14 6. The court may order a hearing on the motion to determine
15 if evidence the forensic sample should be subjected to DNA
16 analysis profiling.

17 7. The court shall grant the motion if all of the following
18 apply:

19 a. The evidence forensic sample subject to DNA ~~testing~~
20 profiling is available and ~~in a condition that will permit~~
21 analysis. any of the following apply:

22 (1) DNA profiling has not been performed on the forensic
23 sample.

24 (2) DNA profiling has been previously performed on
25 the forensic sample and the defendant is requesting DNA
26 profiling using a new method or technology approved by the
27 accrediting organization and authorized by the federal bureau
28 of investigation for DNA profiling that is substantially more
29 probative than the DNA profiling previously performed.

30 b. A sufficient chain of custody has been established for
31 the evidence forensic sample.

32 c. The identity of the person who committed the crime for
33 which the defendant was convicted was a significant issue in
34 the crime for which the defendant was convicted.

35 d. The evidence forensic sample subject to DNA ~~analysis~~

1 profiling is material to, and not merely cumulative or
2 impeaching of, evidence included in the trial record or
3 admitted to at a guilty plea proceeding.

4 e. ~~DNA analysis of the evidence~~ The DNA profiling results
5 would raise a reasonable probability that the defendant would
6 not have been convicted if ~~DNA profiling had been available at~~
7 ~~the time of the conviction and had been conducted prior to the~~
8 ~~conviction~~ such results had been introduced at trial.

9 8. a. Upon the court granting a motion filed pursuant to
10 this section, DNA analysis profiling of evidence a forensic
11 sample shall be conducted within the guidelines generally
12 accepted by the scientific community. The defendant shall
13 provide DNA samples for testing if requested by the state.

14 b. In response to a motion filed pursuant to this
15 section, and after proper notice to the parties, including
16 the department of public safety or other entity authorized
17 to perform the search, the court may enter an order that
18 authorizes the department of public safety or other entity to
19 access the DNA database and do any of the following:

20 (1) Compare a DNA profile obtained from a DNA sample or
21 forensic sample collected in connection with an investigation
22 or prosecution of the defendant against the DNA database
23 through the use of a keyboard search.

24 (2) Utilize a search method similar to a keyboard search
25 that does not involve uploading the DNA profile to the DNA
26 database if the court determines all of the following apply:

27 (a) The DNA profile complies with federal bureau of
28 investigation requirements or state requirements, whichever are
29 applicable, as such requirements are applied to law enforcement
30 agencies seeking such a comparison, and the database meets
31 national DNA index system or state DNA index system criteria,
32 whichever is applicable.

33 (b) If a comparison of the DNA profile had been conducted
34 and if the results had been admitted at trial resulting in
35 a verdict of guilty, a reasonable probability exists that

1 the verdict would have been more favorable to the defendant,
2 or in a case involving a plea of guilty, if the results had
3 been available to the defendant prior to the guilty plea, a
4 reasonable probability exists that a conviction would not have
5 resulted.

6 9. Results of DNA analysis profiling conducted pursuant
7 to [this section](#) shall be reported to the parties and to the
8 court and may be provided to the board of parole, department
9 of corrections, and criminal and juvenile justice agencies,
10 as defined in [section 692.1](#), for use in the course of
11 investigations and prosecutions, and for consideration in
12 connection with requests for parole, pardon, reprieve, and
13 commutation. DNA samples obtained pursuant to [this section](#)
14 may be included in the DNA data bank, and DNA profiles and DNA
15 records developed pursuant to [this section](#) may be included in
16 the DNA database.

17 10. A criminal or juvenile justice agency, as defined in
18 [section 692.1](#), shall maintain DNA samples and evidence forensic
19 samples that could be tested for DNA for a period of three
20 years beyond the limitations for the commencement of criminal
21 actions as set forth in [chapter 802](#). [This section](#) does not
22 create a cause of action for damages or a presumption of
23 spoliation in the event evidence a forensic sample is no longer
24 available for testing.

25 11. If the court determines a defendant who files a motion
26 under [this section](#) is indigent, the defendant shall be entitled
27 to appointment of counsel as provided in [chapter 815](#).

28 12. If the court determines after DNA analysis profiling
29 ordered pursuant to [this section](#) that the results indicate
30 conclusively that the DNA profile of the defendant matches the
31 profile from the analyzed evidence used against the defendant,
32 the court may order the defendant to pay the costs of these
33 proceedings, including costs of all testing, court costs, and
34 costs of court-appointed counsel, if any.

35 Sec. 3. NEW SECTION. 81.11 **Compliance with applicable laws.**

1 A court shall not enter an order under this chapter that
2 would result in a violation of state or federal law or loss of
3 access to a federal system or database.

4 EXPLANATION

5 The inclusion of this explanation does not constitute agreement with
6 the explanation's substance by the members of the general assembly.

7 This bill relates to a defendant filing a motion for an order
8 to require that DNA analysis be performed on evidence after
9 conviction.

10 The bill modifies or adds numerous definitions under Code
11 chapter 81 (DNA profiling).

12 The bill defines "combined DNA index system" to mean a
13 national, searchable DNA database created and maintained by the
14 federal bureau of investigation where DNA profiles are stored
15 and searched at a local, state, or national level.

16 The bill expands the definition of "DNA profile" to include
17 the objective form of the results of DNA analysis performed on
18 a forensic sample, to the extent that sufficient biological
19 material is present to develop a valid DNA profile. Currently,
20 "DNA profile" means the objective form of the results of DNA
21 analysis performed on a DNA sample, and the results of all DNA
22 identification analysis on an individual's DNA sample are also
23 collectively referred to as the DNA profile of an individual.

24 The bill defines "DNA testing" to mean a test to analyze
25 physical and biological evidence from a DNA sample including
26 analysis that might not result in the establishment of a
27 complete DNA profile.

28 The bill defines "forensic sample" to mean an evidentiary
29 item that may contain DNA relevant to a crime.

30 The bill defines "keyboard search" to mean a manual keyboard
31 search conducted in accordance with the current version of the
32 national DNA index operational procedures manual.

33 The bill provides that a defendant who has been convicted
34 of a felony or an aggravated misdemeanor may make a motion
35 to the court for an order to require that DNA profiling be

1 performed on a forensic sample collected in the case for which
2 the defendant stands convicted. Current law provides that such
3 a defendant who has not previously been required to submit a
4 DNA sample for DNA profiling may make such a motion.

5 The bill requires the defendant's motion for an order
6 to require DNA profiling be performed on a forensic sample
7 collected in the case to include a statement detailing why the
8 DNA results would have changed the outcome of the trial or
9 invalidated a guilty plea if the requested DNA profiling had
10 been conducted prior to the conviction. Current law requires
11 such motion to state why DNA evidence would have changed the
12 outcome of the trial or invalidated a guilty plea if DNA
13 profiling had been conducted prior to conviction.

14 The bill specifies that the defendant's motion shall be
15 served upon the county attorney and upon the laboratory, if
16 known by the defendant, holding the biological evidence.

17 Subject to the confidentiality provisions of Code section
18 81.8, the bill requires that any DNA profiling of the defendant
19 or an unknown person, or other biological evidence conducted
20 by the state or by the defendant shall be disclosed and the
21 results of such profiling or other testing be described in
22 the motion or answer. Current law requires DNA profiling,
23 not DNA testing results, to be disclosed and does not require
24 disclosure when the DNA profiling results in the DNA profile of
25 an unknown person.

26 The bill specifies that the court shall grant the
27 defendant's motion for an order to require that DNA profiling
28 be performed on a forensic sample collected in the case for
29 which the person stands convicted when either DNA profiling
30 has not been performed on the forensic sample or when DNA
31 profiling has been previously performed on the forensic sample
32 and the defendant is requesting DNA profiling using a new
33 method or technology approved by the accrediting organization
34 and authorized by the federal bureau of investigation for DNA
35 profiling that is substantially more probative than prior DNA

1 profiling.

2 Additionally, the bill specifies that the defendant's motion
3 shall be granted when the DNA profiling results would raise a
4 reasonable probability that the defendant would not have been
5 convicted if such results had been introduced at trial.

6 Upon the court granting a defendant's motion under the bill,
7 DNA profiling of a forensic sample shall be conducted within
8 the guidelines generally accepted by the scientific community.
9 The court may enter an order that authorizes the department
10 of public safety or other entity to access the DNA database
11 and either compare a DNA profile obtained from a DNA sample or
12 forensic sample collected in connection with an investigation
13 or prosecution of the defendant against the DNA database by
14 using a keyboard search or utilize a search method similar to a
15 keyboard search that does not involve uploading the DNA profile
16 to the DNA database.

17 The court may order authorizing the department of public
18 safety or other entity to utilize a search method similar to
19 the keyboard search that does not involve uploading the DNA
20 profile to the DNA database if all of the following apply:
21 the DNA profile complies with federal bureau of investigation
22 requirements or state requirements, whichever are applicable,
23 as such requirements are applied to law enforcement agencies
24 seeking such a comparison, and the database meets national
25 DNA index system criteria or state DNA index system criteria,
26 whichever is applicable; and if a comparison of the DNA
27 profile had been conducted and if the results had been admitted
28 at trial resulting in a verdict of guilty, a reasonable
29 probability exists that the verdict would have been more
30 favorable to the defendant, or in a case involving a plea of
31 guilty, if the results had been available to the defendant
32 prior to the guilty plea, a reasonable probability exists that
33 a conviction would not have resulted.

34 The bill also specifies that a court shall not enter an order
35 that would result in a violation of state or federal law or

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1 loss of access to a federal system or database.